

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANTS:

ELIZABETH A. GAMBOA
Franklin, Indiana

ATTORNEY FOR APPELLEE:

MICHELLE L. COOK
Brookville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF H.P., A CHILD)
ALLEGED TO BE IN NEED OF SERVICES,)

NATHANIAL R. and DESIREE P.,)

Appellants-Respondents,)

vs.)

No. 24A04-0708-JV-469

FRANKLIN COUNTY OFFICE OF)
FAMILY AND CHILDREN,)

Appellee-Petitioner.)

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0610-JV-131

March 6, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

H.P. was adjudged to be a child in need of services by the Franklin Circuit Court. H.P.'s parents appeal the adjudication arguing that it is not supported by sufficient evidence. Concluding that the evidence is insufficient to support the CHINS adjudication, we reverse and remand for proceedings consistent with this opinion.

Facts and Procedural History

H.P. was born to Desiree P. ("Desiree") on February 5, 2006. H.P.'s father, Nathaniel R. ("Nathaniel") established paternity and provided support for H.P. Both Desiree and Nathaniel were minors on the date of H.P.'s birth. H.P. and Desiree resided with Desiree's maternal grandparents ("Grandparents"). Desiree's mother, Retha P. ("Retha"), provided Grandparents with a temporary guardianship document attempting to give them authority to act as Desiree's legal representatives.

At some point in October 2006, Retha's brother contacted Franklin Circuit Court Judge Steven Cox because he was concerned that the temporary guardianship document Retha provided to Grandparents might not be legally sufficient. Judge Cox referred the matter to the Franklin County Department of Child Services ("FCDCS"), who began an investigation.

A family case manager reviewed the guardianship document, and after determining that it was likely not legally sufficient, the case manager took emergency custody of Desiree and H.P. In its request for an emergency detention hearing, the FCDCS alleged that H.P. was believed to be a CHINS because "the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with

necessary food, clothing, shelter, medical care, education or supervision.” Appellant’s App. p. 13. The FCDCS alleged that the following circumstance supported its determination of probable cause to believe that H.P. is a CHINS: “Child’s grandmother abandoned child. Child’s mother is a minor.” Id.

An emergency detention hearing was held before Judge Cox on October 24, 2006. The court never specifically determined whether the temporary guardianship document was legally deficient and never asked Retha to correct any alleged defect in the document she provided to Grandparents. Instead, the court found that because Grandparents did not have legal authority to act on Desiree’s behalf, “there is probable cause to have detained [H.P.], that [H.P.] should be placed in the . . . physical and legal custody of [Desiree] who is in the physical and legal custody of [Grandparents] by placement . . . through the Department of Child Services[.]” Emergency Detention Hearing Tr. pp. 12-13. In its “Order on Detention Hearing,” the court stated,

“[H.P.] should be detained because detention is essential to protect the child and in the child’s best interests. The removal of the child was authorized and necessary under IND. CODE 31-34-2-3 to protect the child. No reasonable efforts were nor could have been made to prevent the removal of the child from the home due to the emergency situation and urgent nature of removal.”

Appellant’s App. p. 16. Finally, the court ordered that H.P. “remain in her current relative placement with her mother, Desiree [], who is presently in the physical and legal custody of her maternal grandparents through the FCDCS having jurisdiction over the child’s mother.” Id.

On November 15, 2006, the FCDCS filed a petition alleging that H.P. is a child in need of services. The petition alleged that H.P. is in need of services because Desiree

“was not in the custody of anyone with legal standing to make legal decisions and had been abandoned by her own mother who is said child’s maternal grandmother, Retha [], and intervention of the Court is now necessary to obtain the services needed.” Id. at 23. A similar petition was filed alleging that Desiree was a CHINS. At a fact-finding hearing held less than one month before Desiree’s eighteenth birthday, Retha admitted that Desiree was a CHINS. The court ordered Desiree to complete counseling and completion of an independent living skills course. Fact-Finding Hearing Tr. p. 14. Retha was not ordered to complete any services.

On March 19, 2007, the FCDCS moved to dismiss the CHINS petition because Desiree “has attained the age of eighteen and has complied with the child’s case plan and improved her ability to fulfill her parental obligation.” Id. at 29. However, two days later, the FCDCS moved to withdraw their motion because it “has recently received information which brings into question the child’s mother, Desiree[’s] [] ability to properly parent said child, [H.P.]. Id. at 30. The court granted the FCDCS’s motion to withdraw its motion to dismiss.

On April 5, 2007, the court held the initial hearing on the November 15, 2006 petition alleging that H.P. is a CHINS. Desiree and Nathaniel denied the allegations of the CHINS petition. Shortly after the initial hearing, Desiree and H.P. were removed from grandparents’ home and placed in foster care because Desiree engaged in “some delinquent behaviors.” Fact-Finding Hearing Tr. p. 4.

A fact-finding hearing commenced on July 10, 2007. The case manager testified that Desiree and H.P. were initially detained because Retha did not “provide the required

documentation to give the [Grandparents] authority to care for” Desiree and H.P. Tr. p. 4. He also stated that he “had some concerns” about Desiree’s ability to care for H.P. because she “presented as some ways immature.” Id. When asked “[w]hat services were supplied prior to this detention to prevent the removal,” the case manager replied, “[n]one due to the emergency nature of the situation.” Id. He also testified that there has never been “any allegation or any evidence that there was any actual abuse or neglect” of H.P. Id. at 6. Nathaniel’s father testified at the hearing that he considers Desiree to be a member of his family and wants Desiree and H.P. to reside in his home in Ohio. Nathaniel, who was seventeen at the time of the hearing, intends to marry Desiree. Desiree testified that she is capable of caring for H.P. and, if the court were to find that she is no longer a CHINS, she would reside with Nathaniel’s family.

After noting that Desiree is a ward of the court because she was adjudicated a CHINS, the court also found H.P. to be a CHINS. The court reached that conclusion after stating that pursuant to the petition alleging that Desiree is a CHINS and Retha’s admission that Desiree is a CHINS

[t]here is still some work to be done, the completion of counseling and completion of independent living and until we [] reach that or until [Desiree] is twenty-one years of age the Court has the ability to continue its jurisdiction to see those things through. So [] while it sounds like we’re getting close [] with Desiree we’re not there today and based on that the Court will find that [] because she is herself a continuing CHINS that she hasn’t the independent ability to [] make decisions for and provide for [] the minor child [H.P.], and so for those reasons the Court will also . . . find that [H.P.] is [] a child in need of services as defined by the statute and shown by a preponderance of the evidence.

Fact-Finding Hearing Tr. p. 14.

The court entered its Dispositional Order on August 7, 2007, and ordered H.P. to remain in her current foster care placement with Desiree. The court concluded that placement in foster care was “least restrictive and in her best interest.” Appellant’s App. p. 9. The court also determined that the FCDCS “shall have responsibility for the placement and care of” H.P., that Desiree must continue with counseling sessions and participate in an Independent Living Skills course, and that Nathaniel will participate in Parenting Curriculum sessions. Id. at 10. Desiree and Nathaniel now appeal.

Discussion and Decision

The Fourteenth Amendment to the United States Constitution gives parents a right to establish a home and raise their children. In re D.G., 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005) (quoting Troxel v. Granville, 530 U.S. 57, 65 (2000)). “Indeed the parent-child relationship is ‘one of the most valued relationships in our culture.’” Id. (quoting Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 285 (Ind. 2003)). However, a parent’s right to his children is balanced against the State’s limited authority to interfere for the protection of the children. See D.G., 702 N.E.2d at 781.

Indiana Code section 31-34-1-1 provides that a child under eighteen years old is a CHINS if:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

- (2) the child needs care, treatment, or rehabilitation that:
 (A) the child is not receiving; and
 (B) is unlikely to be provided or accepted without the coercive intervention of the court.

Ind. Code § 31-34-1-1 (1998 & Supp. 2007).

The FCDCS alleged that H.P. was a CHINS under subsection one of the statute because her mother Desiree “was not in the custody of anyone with legal standing to make legal decisions and had been abandoned by her own mother who is said child’s maternal grandmother, Retha [], and intervention of the Court is now necessary to obtain the services needed.” Appellant’s App. p. 23. The FCDCS bore the burden of proving by a preponderance of the evidence that H.P. is a CHINS. Ind. Code § 31-34-12-3 (1998). When reviewing the sufficiency of the evidence, we consider only the evidence most favorable to the judgment and the reasonable inferences flowing therefrom. Perrine v. Marion County Office of Child Servs., 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). We will not reweigh the evidence or judge the credibility of witnesses. Id.

Initially, we observe that Indiana Code section 31-34-19-10 requires that the juvenile court give reasons for its disposition in a CHINS proceeding. Our court has emphasized the need for a juvenile court to make clear findings of fact and has suggested that the failure to make such findings creates potential procedural due process problems for any subsequent termination proceedings. See In re J.Q., 836 N.E.2d 961, 966-67 (Ind. Ct. App. 2005). Here, the juvenile court did not enter any specific factual findings to support its adjudication of H.P. as a CHINS. However, because there is a lack of

evidence supporting the CHINS adjudication, we do not find it necessary to remand for more specific findings.

Simply said, there is absolutely no evidence in the record that H.P. has been abused, neglected, or endangered in any way. The family case manager conceded that there has never been “any allegation or any evidence that” H.P. has been abused or neglected by Desiree. Fact-Finding Hearing Tr. p. 6. The case manager simply stated that he had “some concerns about immaturity[.]” Id. at 5. There are vague references in the record indicating that Desiree has engaged in some delinquent behavior, but there is no evidence establishing what those behaviors might be. Although Desiree is allegedly also a CHINS, the fact-finding hearing was held after her eighteenth birthday.¹ Therefore, Desiree is no longer a minor. There is no reason that Desiree would be incapable of making legal decisions involving H.P. if Desiree’s own CHINS adjudication was vacated. For these reasons, we conclude that the FCDCS failed to establish that H.P. is a CHINS with respect to Desiree.

Moreover, with regard to Nathaniel, there is no evidence in the record that he neglected, abused, or endangered H.P. in any way. The evidence established that Nathaniel has established paternity of H.P., exercises regular visitation, and he and his family provide support for her. Accordingly, we conclude that the FCDCS also failed to establish that H.P. is a CHINS with respect to Nathaniel.

¹ Retha admitted that Desiree was a CHINS and that she had abandoned her, despite the fact that Desiree was living with Retha’s parents at the time of the emergency detention with Retha’s consent. Incredibly, Retha was not ordered to participate in any services, but Desiree was ordered to and has participated in parenting classes, counseling, and an independent living skills course. The only reason for Desiree’s CHINS adjudication was abandonment by Retha. Because Desiree is no longer a minor, we are mystified by the fact that this adjudication has not been vacated.

Conclusion

The juvenile court's adjudication of H.P. as a CHINS is not supported by the evidence. Accordingly, the judgment of the juvenile court is reversed and this cause is remanded with instructions to the court to vacate H.P.'s CHINS adjudication.

Reversed and remanded for proceedings consistent with this opinion.

FRIEDLANDER, J., and ROBB, J., concur.